

SECTION B

SIP REQUIREMENTS

OVERVIEW OF STATE IMPLEMENTATION PLANS (SIPs)

GENERAL PROVISIONS FOR SIP SUBMITTALS

SIP DEVELOPMENT

SPECIFIC PROVISIONS OF SIPs

DIFFERENT TYPES OF SIP SUBMITTALS THAT APPLY FOR TRANSPORTATION CONFORMITY

15% Reasonable Further Progress (RFP) SIP

3% Rate of Progress SIP

Attainment SIPs

Maintenance Plans

Conformity SIPs

RELATIONSHIP OF SIPs TO TRANSPORTATION CONFORMITY

March 2, 1999 Court ruling on Use of Submitted SIP Budgets for Conformity

Which SIP Budget Applies for Transportation Conformity Purposes?

Consequences of Control Strategy Implementation Plan Failures

EMISSIONS BUDGETS

Motor Vehicle Emissions Budgets in SIPs

NO_x Budgets

Subregional Budget Option

Safety Margins in Emissions Budgets

Trading Emissions Among Budgets

How to Find the Motor Vehicle Emissions Budget in the SIP

Adequacy of Motor Vehicle Emissions Budgets

Criteria for EPA Approval of a Motor Vehicle Emissions Budget

QUESTIONS AND ANSWERS

Exhibits:

Exhibit 8: Example of Roles & Responsibilities in SIP Development

Exhibit 9: Summary of Emissions by Major Source Category

Exhibit 10: SIP Components From Federal, State & Local/Regional Control Measures

Exhibit 11: SIP Requirements for Defining Emissions Problem & Due Dates in Nonattainment Areas

Exhibit 12: Examples of Which Budgets Apply for Transportation Conformity Purposes

SECTION B

SIP REQUIREMENTS

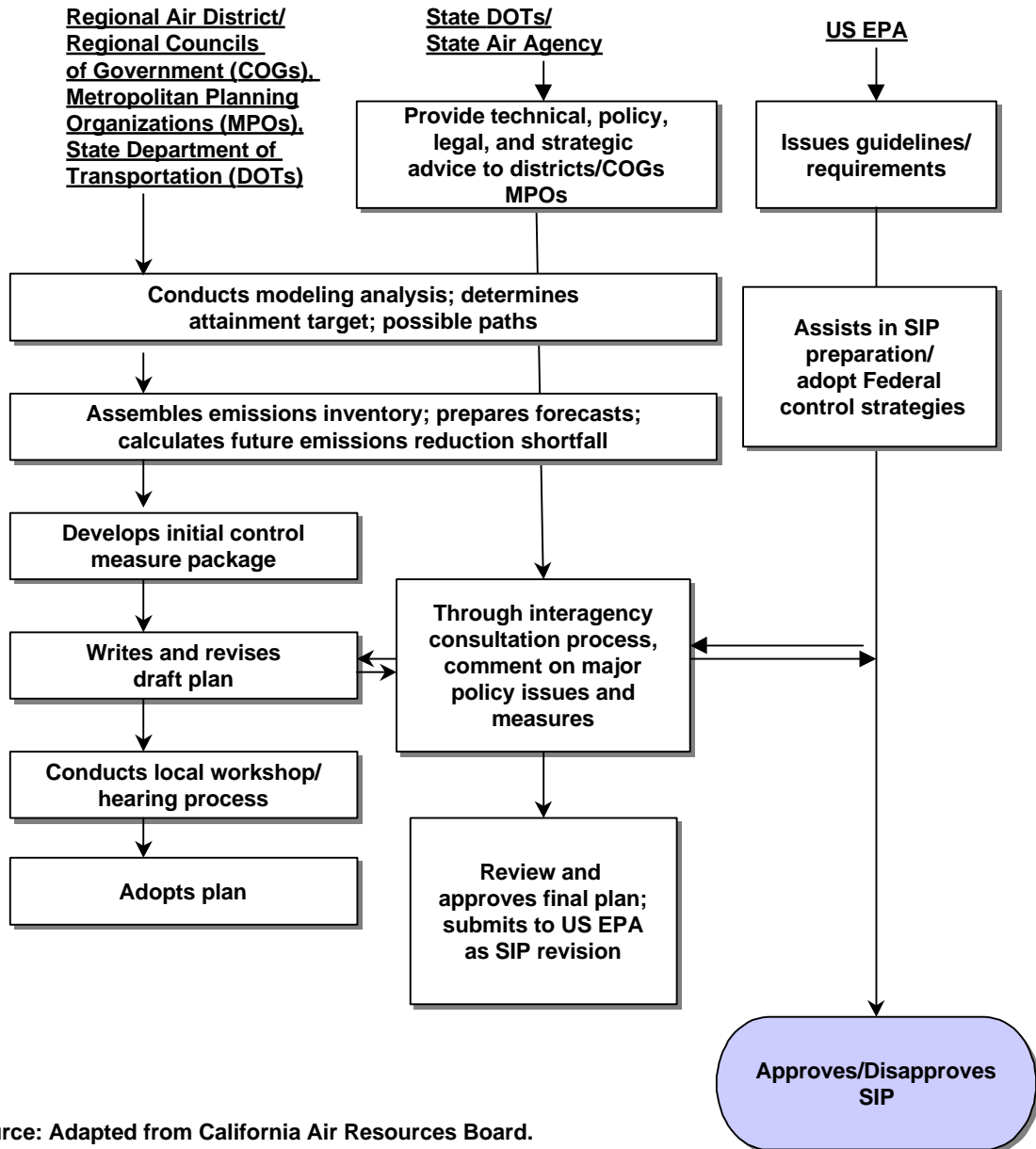
OVERVIEW OF STATE IMPLEMENTATION PLANS (SIPs)

The SIP is a plan prepared by the State that provides for the implementation and enforcement of control measures to attain and maintain the primary and secondary NAAQS in each EPA-designated nonattainment and maintenance area. A SIP must be adopted by the State and approved by EPA for each pollutant for which the State violates the NAAQS (e.g., carbon monoxide, ozone, and PM-10). In cases where an approved SIP was in place at the time of the CAA adoption in 1990, a SIP revision must be developed to incorporate the new CAA requirements, adopted by each State and approved by EPA. The responsibility for SIP development is designated by the Governor and the lead agency is usually the State environmental agency although State DOTs, MPOs and regional air districts (where applicable) must work collaboratively in SIP development, particularly on issues related to transportation strategies to reduce emissions. Roles and responsibilities for SIP planning and development are described in the CAA and included below. Exhibit 8 provides an example of the roles and responsibilities of agencies in the SIP development process. This is only one example of how responsibilities might be assigned to the various parties in SIP development where State air agencies have a lead role. Exhibit 8 also illustrates that SIP development must be a truly collaborative process and is to be a key activity of the interagency consultation process as described in Chapter 2.

42 U.S.C. §7404 (a)(b)(c)

(a) In General.--- For any ozone, carbon monoxide, or PM-10 nonattainment area, the State containing such area and elected officials of affected local governments shall, before the date required for submittal of the inventory described under sections 182(a)(1) and 187(a)(1), jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990, or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such procedures the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. The implementation plan required by this part shall be prepared by an organization certified by the State, in consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection. Such organization shall include elected officials of local governments in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, the organization responsible for the air quality maintenance planning process under regulations implementing this Act, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part. Such

Exhibit 8
Example of Roles & Responsibilities in SIP Development



Source: Adapted from California Air Resources Board.
(Please note: Many States do not have local or regional
air districts or agencies. The State air agency will likely
have a greater role in SIP preparation in most States.)

organization may be one that carried out these functions before the date of the enactment of the Clean Air Act Amendments of 1990.

(b) Coordination.--- The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation air quality planning process described in section 108(e) shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title 23, United States Code, and such planning processes shall take into account the requirements of this part.

(c) Joint Planning.--- In the case of a nonattainment area that is included within more than one State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.

Contents of each SIP are described as follows:

42 U.S.C. §7410

Enforceable emissions limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

Each SIP revision must meet specific criteria and requirements which are detailed in the CAA.¹ Once EPA approves a SIP, it is legally enforceable and a SIP revision is required any time the State cannot meet its commitments to implement the EPA approved SIP strategies or if emissions budget revisions are needed due to updated models. However, an updated model does not necessarily trigger a SIP revision. If a State fails to submit a SIP (or SIP revision) when required, the EPA may develop a Federal Implementation Plan (FIP) for that State. A FIP is a plan developed by the EPA and is enforceable under Federal law. A FIP shall be promulgated by the EPA Administrator:

42 U.S.C. §7410(c)

...at any time within 2 years after the Administrator.....A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under section 110(k)(1)(A), or B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal Implementation plan.

GENERAL PROVISIONS FOR SIP SUBMITTALS

42 U.S.C. §7502 (c)

(c) Nonattainment Plan Provisions.-

The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

¹ 42 U.S.C. §7410.

(1) In General.--Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP.--Such plan provisions shall require reasonable further progress.

(3) Inventory.--Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and Quantification.--Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 173(a)(1)(B), from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable implementation date.

(5) Permits for New and Modified Major Stationary Sources.--Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173.

(6) Other Measures.--Such plan provisions shall include enforceable emissions limitations, and such other control measures, means or techniques(including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standards in such areas by the applicable attainment date specified in this part.

(7) Compliance with Section 110(a)(2).--Such plan provisions shall also meet the applicable provisions of section 110(a)(2).

(8) Equivalent Techniques.--Upon application by any State, the Administrator may allow the use of equivalent modeling, emissions inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency Measures.--Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

SIP DEVELOPMENT

Following is a discussion on SIP development and the types of SIP submittals. Then, the relationship of SIPs to transportation conformity is discussed, including the consequences of SIP failures.

Emissions are generally classified in one of three categories: stationary sources which are broken down into 1) point sources and 2) area sources, and mobile sources. Point sources are relatively large, fixed sources of emissions such as power plants, chemical process industries, and petroleum refineries. Area sources are small, stationary, and non-transportation sources that may collectively

contribute to air pollution (e.g. dry cleaners or bakeries). Mobile sources include on-road sources such as cars, trucks, and buses, and off-road sources such as trains, ships, boats, airplanes, lawnmowers, and construction equipment. There are also natural emissions, called biogenic, which come from the life processes of plants and animals and also contribute to the formation of ozone. Transportation officials share responsibility for finding ways to reduce emissions from on-road mobile sources.

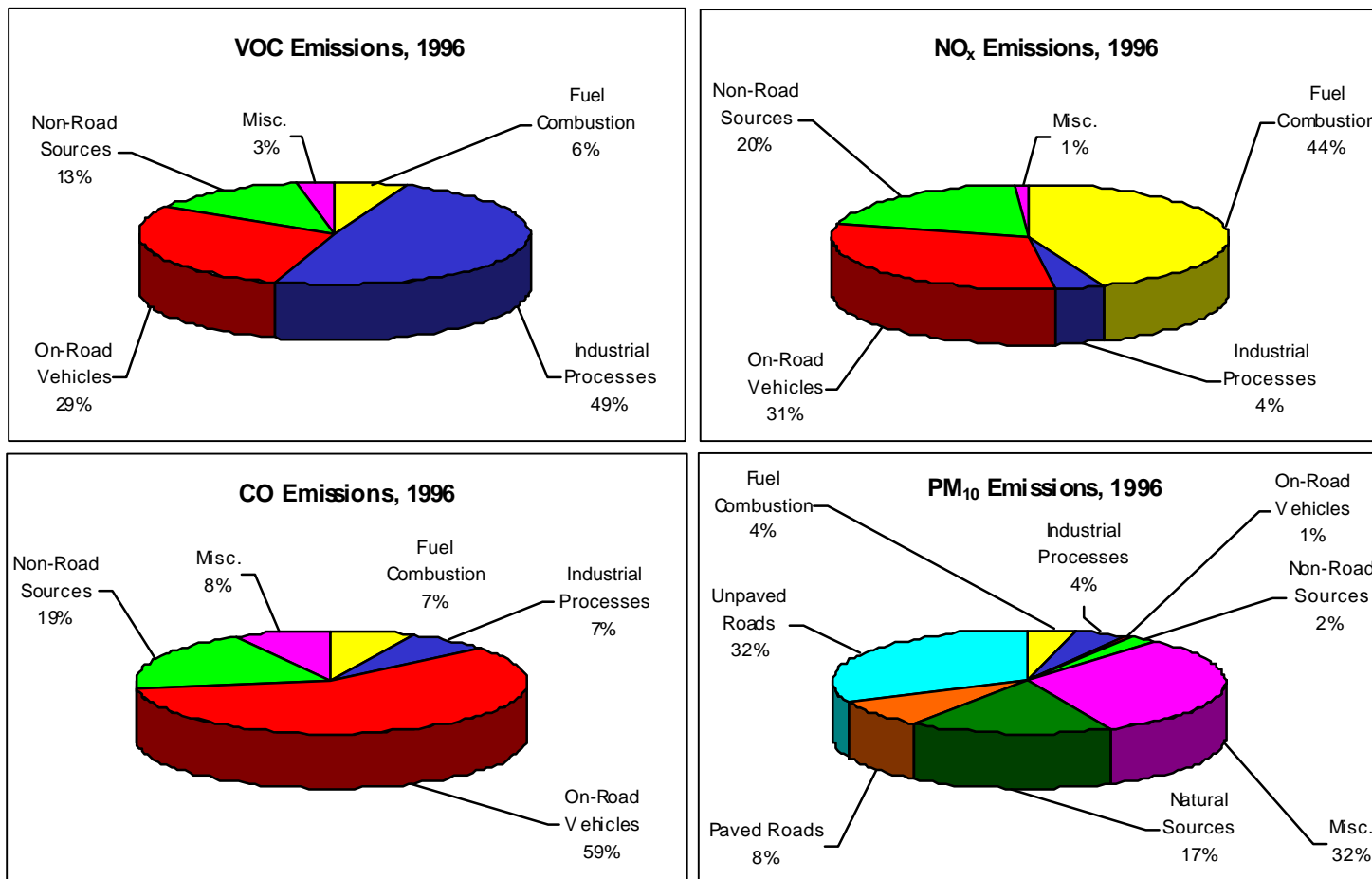
The CAA requires² that periodic inventories of emissions be prepared (emissions inventory) which are comprehensive, accurate, and reflect the current level of actual emissions from all sources. All ozone nonattainment areas classified as marginal and above and carbon monoxide areas must conduct these inventories and submit them to EPA every three years until attainment. This provision is important because it means that SIPs will need to be periodically updated when new emissions factors are approved by EPA or when other changes in the overall levels of emissions over earlier estimates are anticipated. Emissions reductions needed to achieve the NAAQS are determined based on the emissions inventory. States consider cost-effectiveness and feasibility of control strategies to achieve the overall emissions target and reductions can disproportionately rely on mobile or stationary sources. Emissions budgets are established for individual sources (i.e., mobile, point, and area); emissions reduction targets are established for the region.

It is important that the level of emissions reductions assigned to each of the source categories can be achieved through the implementation of the strategies included in the SIP. In some cases, substantial reductions will be needed from the transportation sector in order to reduce CO, VOC, NO_x, and PM-10 emissions by the levels needed to achieve the NAAQS. Therefore, *it is important that transportation and air quality officials participate in decision making on the SIP and allocation of reductions to the different sources.* Exhibit 9 shows the major transportation-related pollutants and their contributions to overall emissions levels.

Following completion of the emissions inventory, modeling analysis, preparation of forecasts of future emissions, and the calculation of future emissions reduction shortfalls, the State environmental agency allocates emissions reduction budgets to individual pollution sources (i.e. mobile, point, and area). The SIP then assigns specific emissions reduction levels to each source category. For the on-road mobile source category of emissions, *the emissions reduction level is further refined into a regulatory limit on emissions, referred to as a motor vehicle emissions budget* for on-road mobile sources and is discussed in detail below.

² 42 U.S.C. §7511(a).

Exhibit 9
Summary of Emissions By Major Source Category
1996 Base-year Average Annual Day (tons/day)



Source: EPA, National Air Quality and Emissions Trends Report-1996, January 1998.

Emissions reduction targets for mobile sources can be achieved in varying degrees through programs that target emissions associated with vehicles and vehicle use or vehicle miles of travel such as:

- ▶ The use of reformulated gasoline, implementation of Inspection and Maintenance (I & M) Programs;
- ▶ The use of alternative modes of transportation such as transit, walking, bicycling; or
- ▶ Transportation investments that are designed to reduce congestion (e.g. signal synchronization programs, congestion pricing).

Government agencies and particularly transportation and air quality agencies, need to cooperatively develop SIPs in order to achieve the needed levels of emissions reductions. Some control strategies, like controls on automobiles and aircraft, for legal and practical reasons, are usually adopted by the Federal government. Other strategies, like controls on fuels, inspection and maintenance programs, or market measures, can be adopted and effectively implemented and enforced at the State level. Finally, control measures such as transit investments or high-occupancy vehicle (HOV) lanes must be implemented at the local or regional level; however, these control measures may require State legislation or approvals. Exhibit 10 illustrates how the different types of strategies adopted by government agencies at the Federal, State, and regional levels can work together in the SIP to enable a nonattainment area to achieve the NAAQS.

SPECIFIC PROVISIONS OF SIPs

Each SIP must comply with thirteen specific provisions³ of the CAA.

CAA §110(a)(2); 42 U.S.C. §7410(a)(2)

(2) Each implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall--

(A) include enforceable emissions limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to--

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

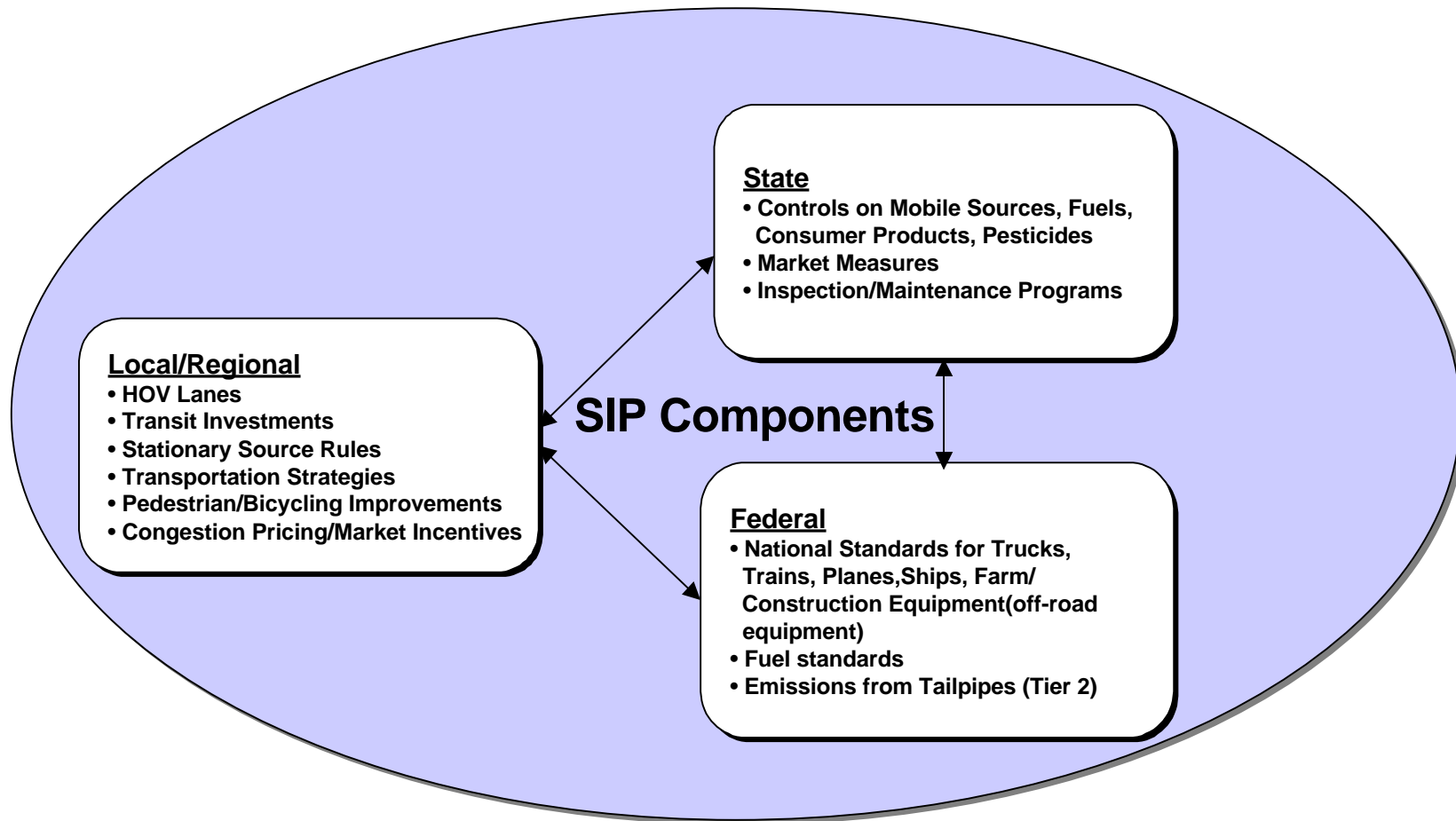
(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

(D) contain adequate provisions --

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will--

³ CAA §110(a)(2); 42 U.S.C. §7410(a)(2).

Exhibit 10
Examples of SIP Components From Federal, State & Local/Regional Control Measures



- (i) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or
 - (ii) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,
 - (iii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);
- (E) provide
 - (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provisions of Federal or State law from carrying out such implementation plan or portion thereof),
 - (ii) requirements that the State comply with the requirements respecting State boards under section 128, and
 - (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;
- (F) require, as may be prescribed by the Administrator--
 - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,
 - (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and
 - (iii) correlation of such reports by the State agency with any emissions limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;
- (G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;
- (H) provide for revision of such plan--
 - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and
 - (ii) except as provided in paragraph (3)(C), whenever the Administrator finds, on the basis of information available to the Administrator, that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;
- (I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment area);
- (J) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration or air quality and visibility protection);
- (K) provide for --
 - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and
 - (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;
- (L) require the owner or operator of each major stationary source to pay to the permitting authority,

as a condition of any permit required under this Act, a fee sufficient to cover--

- (i) the reasonable costs of reviewing and acting upon any application for such a permit, and*
- (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V; and*

(M) provide for consultation and participation by local political subdivisions affected by the plan.

DIFFERENT TYPES OF SIP SUBMITTALS THAT APPLY FOR TRANSPORTATION CONFORMITY

The principal types of SIP submittals that are used for transportation conformity are described below. The requirements for nonattainment areas to define the emissions problem and due dates are shown in Exhibit 11. In addition, the EPA transportation conformity rule (40 CFR Parts 51 and 93) must be incorporated into the SIP (i.e., a conformity SIP) by each State. The processes specifying how transportation conformity will be implemented within a particular State are adopted in the conformity SIP and such procedures are binding and legally-enforceable once approved by EPA.

15% Reasonable Further Progress (RFP) SIP

The 15% RFP SIP must include measures to demonstrate interim progress toward attainment of the NAAQS for ozone. The 15% RFP SIP describes control measures and emissions budgets that contribute to a 15% reduction in VOCs from 1990 levels by 1996. Estimated reductions in NO_x can also be included although there is no requirement to show progress toward NO_x reductions through a 15% RFP submittal unless NO_x is a major problem in ozone formation (and NO_x reductions are necessary for the 15% demonstration). Therefore, these SIPs only include a 1996 VOC motor-vehicle emissions budget, unless a 1996 NO_x budget is needed for the reasons noted above.

3% Rate of Progress SIP

In serious, severe, and extreme ozone nonattainment areas, a reduction of 3% on average each year after 1996 must be demonstrated until attainment, using the selected control strategies.

Attainment SIPs

In addition to showing the 3% annual average reductions, the State must make an air quality attainment demonstration using emissions modeling or any other approved analytical method. An attainment demonstration provides specific annual reductions in emissions needed to attain the NAAQS by the CAA mandated attainment dates for ozone, CO, and PM-10. SIPs contain motor vehicle emissions budgets for the attainment year.

Exhibit 11

SIP Requirements for Defining Emissions Problem & Due Dates in Nonattainment Areas

(Requirements are cumulative for each pollutant type- for example Moderate Ozone areas must also fulfill Marginal Ozone area requirements)

<i>Pollutant and Requirements</i>	<i>SIP Submittal Due Date</i>
Ozone (O₃) Marginal and Above: <u>Emissions Inventory</u> - Submit a 1990 emissions inventory of all hydrocarbon sources, including mobile, stationary, and area sources, and revise every three years thereafter until attainment. These inventories do not create motor vehicle emissions budgets for conformity ⁴ . There is no obligation to revisit motor vehicle emissions budgets when inventories are updated.	November 15, 1992 - and every three years thereafter until attainment
Ozone (O₃) Moderate and Above: <u>15% Reasonable Further Progress Plan</u> - After the baseline emissions inventory is submitted in 1992, the State has 1 year to revise the SIP to show the control strategies that will reduce hydrocarbon baseline emissions 15% over the first 6 years following enactment of the CAA (1990-1996). This reduction, referred to as reasonable further progress (RFP), should come from mobile, stationary and area sources by using a mixture of control strategies for all sources. Emissions reductions from the following measures are not creditable toward the 15% reductions: EPA regulations related to vehicle exhaust or evaporative emissions control systems promulgated by January 1, 1990; EPA regulations related to controls on Reid Vapor Pressure (RVP), a measure of fuel volatility, prior to enactment or required by the CAA; measures to correct deficiencies in existing SIPs and Inspection and Maintenance (I/M) Programs. The 15% reduction must accommodate any population growth resulting in vehicle miles traveled (VMT) growth in the region, and can only be based on measures, that go beyond those noted above, thus eliminating credit for the most effective control strategies. States can take credit for new CAA measures, such as reformulated gasoline, new vehicle exhaust standards or evaporative controls. The latter two, however, may not reduce emission significantly by 1996. State and local officials must be willing to be beyond current controls to achieve emissions credit or reduce emissions-producing activities. Achieving the 15% reductions without counting the above control strategies will be most challenging	November 15, 1993
Ozone (O₃) Serious, Severe, and Extreme: <u>3% Average Reduction Each Year</u> - After 1996 until attainment. These areas must demonstrate a reduction of 3% on average each year after 1996 until attainment under the selected control strategies	November 15, 1994
Ozone (O₃) Moderate and Above: <u>Attainment Demonstration</u> - In addition to the above requirements, the State must make an air quality attainment demonstration using photochemical dispersion modeling or any other analytical method approved by the EPA	November 15, 1994
Ozone (O₃) Serious, Severe and Extreme: These areas must show that current aggregate vehicle mileage, aggregate vehicle emissions, and congestion levels are consistent with those projections used for the area's demonstration of attainment. If current levels exceed projected levels, the State must submit a SIP revision within 18 months that includes strategies to reduce emissions to the original projected levels. These SIP revisions do not establish emissions budgets for conformity purposes.	November 15, 1996 and every third year thereafter until attainment

⁴Readers should note: inventories are a significant input to the development of motor vehicle emissions budgets

Exhibit 11 (Page 2)
SIP Requirements for Defining Emissions Problem & Due Dates in Nonattainment Areas
(Requirements are cumulative for each pollutant type- for example Serious CO areas must also fulfill Moderate CO area requirements)

<i>Pollutant and Requirements</i>	<i>SIP Submittal Due Date</i>
Carbon Monoxide (CO) Moderate <12.7 ppm: <u>Carbon Monoxide Emissions Inventory</u> - These areas must submit a 1990 emissions inventory and control plan by November 15, 1992, of all CO emissions, including mobile, stationary, and area sources, and revise every three years thereafter until attainment. These inventories do not create motor vehicle emissions budgets for conformity ⁵ . There is no obligation to revisit motor vehicle emissions budgets when inventories are updated.	November 15, 1992 and every three years thereafter until attainment
Carbon Monoxide (CO) Moderate ≥ 12.7 ppm: <u>Attainment Demonstration</u> - Demonstrate that attainment will be reached by the December 31, 1995 deadline. Also, provide provisions in the SIP for annual emissions reductions necessary for reaching attainment	November 15, 1992
Carbon Monoxide (CO) Serious: <u>Attainment Demonstration</u> - Demonstrate that attainment will be reached by the December 31, 2000 deadline. Also provide provisions in the SIP for annual emissions reductions necessary for reaching attainment	November 15, 1992
Particulate Matter (PM₁₀) Moderate: <u>Attainment Demonstration</u> - Submit a SIP by November 15, 1991, demonstrating attainment of the NAAQS by December 31, 1994. <u>Milestones</u> - Meet quantitative milestones in the SIP which are to be achieved every 3 years	November 15, 1991
Particulate Matter (PM₁₀) Serious: <u>Attainment Demonstration</u> - Submit a SIP no later than 4 years after reclassification of the area to serious. The SIP must demonstrate attainment of the NAAQS by no later than the 10 th calendar year after the area's classification	4 years after reclassification to serious with attainment demonstrated no later than 10 calendar years after reclassification

Source: A Summary of Transportation Programs and Provisions of the Clean Air Act Amendments of 1990, Federal Highway Administration, FHWA-PD-92-023.

⁵Readers should note: inventories are a significant input to the development of motor vehicle emissions budgets

Maintenance Plans

Maintenance plans provide assurance that an area maintains the ozone, CO, or PM-10 standard over time. Maintenance plans also contain motor vehicle emissions budgets that must address the level of motor vehicle emissions in the last year of the maintenance plan period. Please refer to Chapter 9 for detailed information on maintenance area requirements including timeframes for maintenance plans.

Regardless of which type of SIP is required, motor vehicle emissions budgets included in SIPs become the ceiling on transportation related emissions for each year that a budget is established and until attainment of the respective NAAQS. Adherence to the motor vehicle emissions budget becomes the key measure of conformity between transportation plans, programs and projects and the submitted or approved SIP.

Conformity SIPs

A conformity SIP (also called the conformity SIP revision) must be submitted to EPA and DOT and must contain interagency consultation procedures for plans, TIPs, and SIPs, developed by State and local agencies:

40 CFR 51.390, as amended by 62 FR 43780, 43801, August 15, 1997

“...criteria and procedures for DOT, MPOs and other State or local agencies to assess the conformity of transportation plans, programs, and projects.”⁶

Conformity SIPs do not contain motor vehicle emissions budgets. The conformity SIP must be submitted within 12 months of an area’s designation from attainment to nonattainment and, for existing nonattainment and maintenance areas, within 12 months of the date of publication of amendments to the conformity rule. The conformity SIP must include all of the conformity rule requirements including a delineation of the specific role of State DOTs and verbatim incorporation of many of the rule provisions and tailored interagency consultation procedures. A State can establish more stringent criteria and procedures than Federal rule provisions as long as the State’s procedures apply equally to non-federal and Federal entities. The conformity SIP is legally enforceable through either a Memorandum of Understanding or legislation and therefore the State must implement the SIP provisions. Please refer to Chapter 2 for additional information.

RELATIONSHIP OF SIPs TO TRANSPORTATION CONFORMITY

Once approved by EPA, a SIP is a legally binding commitment to implement the control strategies on the schedules included in the SIP. For transportation conformity purposes, the control strategies related to transportation activities represent commitments to their implementation on the SIP schedules, in the respective nonattainment or maintenance area.

⁶ 40 CFR §51.390, as amended by 62 FR 43780, 43801, Aug. 15, 1997.

Impact of March 2, 1999 Court ruling on use of SIP Budgets for Conformity

The March 2, 1999 Court ruling affected a key provision of the August 15, 1997 conformity rule that had allowed the use of submitted budgets prior to EPA's formal finding of the adequacy of the budget for conformity purposes. More details are included in [Appendices L and M](#) to this Guide which contains both the EPA and DOT guidance on the implementation of the Court ruling.

Can I use a submitted SIP budget for conformity determinations?

Yes, once EPA affirmatively finds the submitted SIP motor vehicle emissions budget adequate for conformity purposes, through the processes described below.

Submitted budgets that have never been used in conformity determinations:

What if I have a submitted budget now or will soon submit a new budget, and this budget was never used in a previous conformity determination? Can I use it in future conformity determinations?

Yes, once EPA affirmatively finds the budget adequate for conformity purposes. (Submitted budgets cannot be used if there is an approved SIP covering the same timeframe and Clean Air Act requirements as the newly submitted SIP. This aspect of the 1997 rule was unchanged by the court.) EPA has worked closely with the litigants and DOT to create a new adequacy process which is consistent with the court's ruling and provides for public involvement on EPA's adequacy determination. EPA intends to review the adequacy of newly submitted budgets through this process within 90 days of EPA's receipt of the SIP. (EPA will only review the adequacy of those submitted budgets which could apply for conformity purposes before EPA approves them.- see note above) EPA will work quickly to determine the adequacy of budgets that are already submitted but have not been used in previous conformity determinations.

EPA will propose the new adequacy process as a conformity rule amendment, and will follow this process as an administrative matter until a final rule amendment is effective. The substantive criteria by which EPA determines adequacy will be the same as those currently included in 40 CFR 93.118(e)(4) (See section on adequacy of motor vehicle emissions budgets later in this Chapter). EPA's new adequacy review process is described below.

Even if EPA finds the SIP budget adequate for conformity purposes, this does not necessarily mean it will be found complete or be approved. If EPA finds the SIP adequate, it still can disapprove the SIP. However, conformity determinations made before a SIP is disapproved still stand. See the questions and answers at the end of this chapter for more information. Additional information about conformity tests and regional analysis requirements is included in Chapters 5-8.

Which SIP Budget Applies for Transportation Conformity Purposes?

40 CFR, as amended by 61 FR 36117-8, July 9, 1996

A. Which Budgets Apply?

1. Approved SIPs Versus Submitted SIPs

Years that are directly addressed by the approved SIP. Motor vehicle emissions budgets in an approved SIP (i.e., the applicable implementation plan) must always be used for demonstrating satisfaction of the budget test for those years in the timeframe of the transportation plan that are addressed by the approved SIP. That is, if the approved SIP establishes a motor vehicle emissions budget for a year in the timeframe of the transportation plan consistency with that budget must be demonstrated for that year. A submitted SIP cannot override the motor vehicle emissions budgets in an approved SIP for the years addressed by the approved SIP.

Clean Air Act section 176(c) specifically requires conformity to approved implementation plans. The provisions of an implementation plan that EPA has approved under Clean Air Act section 110 are enforceable and cannot be changed on the basis of a submission. As a result, although some conformity implementers and interested parties requested that they be permitted to replace approved SIP budgets with submitted SIP budgets, EPA believes that this cannot be legally allowed. In addition, approved SIP budgets have been subject to full technical review and public comment and should not be replaced by budgets that have not yet been fully analyzed and reviewed.

Years that are not directly addressed by the approved SIP. However, this proposal would allow a submitted SIP's motor vehicle emissions budgets to be used instead of the approved SIP's budgets for those years not directly addressed by the approved SIP. For example, for a serious ozone nonattainment area, the approved 15% SIP's VOC budget would have to be used to demonstrate the budget test for 1996, but the submitted attainment SIP's budget would be used to demonstrate the budget test for the attainment year (1999).

Similarly, this proposal would allow a submitted maintenance plan's motor vehicle emissions budgets to be used for the years after the attainment year instead of continuing to use the approved attainment year budget for those subsequent years. Under the existing transportation conformity rule, a submitted maintenance plan's motor vehicle emissions budget(s) may not be used for transportation conformity purposes until the maintenance plan has been approved.

EPA believes this flexibility is appropriate because any given approved SIP is only intended to address a certain period of time. In general, attainment SIPs address only the period thorough the attainment year, and maintenance plans address at a minimum a ten-year period. EPA believes that the Clean Air Act's reference to conformity to "approved implementation plans" applies to the years which the approved SIP addresses and that this language should not prohibit using as the relevant test of conformity subsequent SIP submissions that address later years. EPA believes that the submitted maintenance plan's motor vehicle emissions budgets are more relevant to the years after the attainment year than the attainment year budget in the approved attainment SIP. Similarly, a submitted attainment SIP's budget is more relevant for the attainment year than an approved post-1996 SIP budget. EPA had previously required use of the last budget in the approved SIP for all subsequent years only because there was no other budget against which to determine conformity. Once such a budget is submitted, it provides the most relevant basis for testing conformity.

If no SIP is submitted that addresses the years after the approved SIP, the approved SIP's budget(s) would continue to apply for the future years in the timeframe of the transportation plan.

Changes to approved SIPs. This proposal would not alter the fact that proposed changes to an approved SIP cannot be used for the purposes of transportation conformity until those changes are approved. For example, if an area submits a proposed revision to a SIP with an attainment year budget to replace the

approved attainment SIP, that SIP submission cannot be used until it is approved by EPA.

2. Multiple SIP Submissions

How soon can a newly submitted SIP replace a previously submitted SIP? Under this proposal, the most recent SIP submissions would replace other prior SIP submissions that have not yet been approved.

...EPA believes that the simplicity gained from this change outweighs any potential limitation to the flexibility of areas to choose among SIP submissions in the first few weeks after submission. In many instances, SIP submissions intended to replace previous SIP submissions were either inspired by conformity considerations or represent a more accurate basis for conformity. As a result, most areas would not choose to use the previous SIP submission even if given the opportunity.

...When should different submitted SIPs be used? When a series of control strategy SIPs have been submitted to fulfill different Clean Air Act requirements for a particular pollutant, the budget test would be demonstrated using each relevant submitted SIP that is adequate for conformity purposes.SIP budget(s) that address the latest future year would apply for all subsequent years in the timeframe of the transportation plan.

Exhibit 12 shows examples of which SIP budgets apply for transportation conformity purposes in ozone nonattainment areas depending upon the status of the SIP submittal.

Exhibit 12
Examples of Which Budgets Apply for Transportation Conformity Purposes in Ozone Nonattainment Areas

Nonattainment Area Type	Type of SIP/Attainment Demonstration	Submitted w/ EPA Adequacy Determination	Approved	Budget Applies for Attainment Year⁷	Budget Applies for Years Beyond Attainment Year⁸
Moderate Ozone Area	<i>15% SIP w/ 1996 Budget</i>	X		X	
	<i>Attainment Demonstration w/1996 Budget</i>	X		X	X
Serious or Above Ozone Area	<i>Post-1996 SIP w/1999 Budget</i>	X		X	
	<i>Attainment Demonstration w/1999 Budget</i>	X		X	X
Moderate Ozone Area	<i>15% SIP</i>		X	X	
	<i>Attainment Demonstration</i>	X		X	X
Serious or Above Ozone Area	<i>Post-1996 SIP</i>		X	X	
	<i>Attainment Demonstration</i>	X		X	X
Moderate Ozone Area	<i>15% SIP w/ 1996 Budget</i>	X		X	
	<i>Attainment Demonstration w/1996 Budget</i>		X	X	X
Serious or Above Ozone Area	<i>Post-1996 SIP w/1999 Budget</i>	X		X	
	<i>Attainment Demonstration w/ 1999 Budget</i>		X	X	X
Moderate Ozone Area	<i>15% SIP w/1996 Budget</i>		X	X	
	<i>Attainment Demonstration w/1996 Budget</i>		X	X	X
Serious or Above Ozone Area	<i>Post-1996 SIP w/ 1999 Budget</i>		X	X	
	<i>Attainment Demonstration w/1999 Budget</i>		X	X	X

⁷ If there are multiple budgets for a given year that address different CAA requirements, these budgets cannot be ignored for transportation conformity purposes. For example, for SIP purposes, EPA currently requires an area to meet its 15% SIP requirement even if its attainment demonstration requires less.

⁸ Areas with larger budgets in their attainment demonstrations would not be constrained by their 15% or post-1996 SIPs for the out-years. Areas with smaller budgets in their attainment demonstrations would begin to be constrained in the attainment year and/or out-years upon their submission.

Consequences of Control Strategy Implementation Plan Failures

It is important to note the consequences on the transportation plan, TIP, and projects in the event of a control strategy SIP failure (control strategy SIPs are 15% SIPs, post-1996 SIPs, and attainment demonstrations). The consequences of SIP disapproval only apply when control strategy SIPs are disapproved. The rule provisions and definition of a protective finding are included below and a complete discussion of these issues is provided in Chapter 4.

40 CFR §93.120 as amended by FR 62 43813, Aug.15, 1997

(a) Disapprovals.

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform, until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget(s) in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget(s) applies for transportation conformity purposes, pursuant to §93.109.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

(b) Failure to submit and incompleteness. In areas where EPA notifies the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment areas for such failure under section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(c) Federal implementation plans. If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

Note: 40 CFR §93.120(a)(2) was remanded by the Court in its March 2, 1999 ruling. Please refer to Chapter 4 for further information on consequences of SIP disapproval.

40 CFR §93.101 as amended by FR 43803, Aug. 15, 1997

Protective finding means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

How does the court's ruling affect when conformity consequences of SIP disapprovals apply?

The 1997 conformity rule created a 120-day grace period following EPA's disapproval of a SIP without a protective finding, after which conformity freezes. A "freeze" means that only projects in the first three years of the transportation plan and program can proceed. The court eliminated this grace period, so now a conformity freeze begins on the effective date of EPA's disapproval. There are currently no areas that are in this situation. See the preamble of the 1997 conformity rule (62 FR 43796-7) for more information about SIP disapprovals, protective findings, and conformity freezes.

However, EPA believes that it can still effectively provide transportation agencies a short time period prior to the impacts of a conformity freeze. EPA has administrative discretion to make disapprovals of control strategy SIPs effective 60-90 days after the publication of the disapproval in the Federal Register. A conformity freeze would start upon the effective date of the disapproval. EPA believes that such a delayed effective date is appropriate to allow transportation agencies to complete conformity determinations that were well underway when EPA disapproves a SIP without a protective finding.

EMISSIONS BUDGETS

Motor Vehicle Emissions Budgets in SIPs

Motor vehicle emissions budgets are developed based upon the emissions inventory and reflect effects of control measures included in the SIP. The budget is developed as part of the SIP process and input into budget development must be included in the interagency consultation process as discussed in Chapter 2. Motor vehicle emissions are estimated based upon the number of vehicles in the region, their age, the rate of fleet turnover to newer and cleaner vehicles, seasonal temperatures in the region, vehicle miles traveled (VMT), population growth, and other factors. A motor vehicle emissions budget is:

“...that portion of the total allowable emissions defined in the submitted or approved control strategy SIP revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.”⁹

⁹ 40 CFR §93.101, as amended by 62 FR 43803, Aug. 15, 1997.

Once the motor vehicle emissions budget is established and submitted to the EPA *and EPA's positive adequacy determination is made*, it can be used for conformity purposes. Emissions expected from implementation of transportation plans and programs must be *consistent with estimates of emissions from motor vehicles and necessary emissions reductions* contained in the SIP. The motor vehicle emissions budget is the mechanism EPA has identified for carrying out the demonstration of consistency, and transportation conformity determinations are an affirmation that this test has been met. A detailed discussion of regional emissions requirements and conformity tests is included in Chapters 5-8.

Common Problem and Issue Areas

NO_x Budgets

Most 15% SIPs and RFP SIPs do not have NO_x budgets; however, the SIP will be considered to have a NO_x budget if the SIP has an explicit ceiling on future NO_x emissions, and the ceiling is a net reduction from 1990 NO_x levels.

A NO_x budget would not be established in the SIP if the attainment demonstration or maintenance SIP demonstrates that NO_x increases are not a problem based upon modeling that demonstrates that NO_x growth would not increase ozone concentrations or preclude attainment by the statutory deadline. Some areas have historically applied for a NO_x waiver to eliminate the requirement for the NO_x emission reduction tests. A NO_x waiver is a finding by the EPA Administrator under Clean Air Act sections 182(b) or 182(f) that additional reductions of NO_x would not contribute to attainment of the ozone standard by the statutory deadline. The granting of a NO_x waiver by EPA however, does not mean the area will not be required to have a NO_x budget.

Subregional Budget Option

If a nonattainment area includes more than one MPO, then the SIP may establish motor vehicle emissions budgets for each MPO (subarea budgets) or the MPOs must collectively make a conformity determination for the entire nonattainment area.¹⁰ The SIP must explicitly indicate an intent to create such subarea budgets for the purposes of conformity.¹¹ If the SIP establishes subarea budgets for conformity purposes, then, in the establishment of such subarea budgets, the MPO and DOT must consider the estimates of future emissions by geographic subarea within the nonattainment area.

58 CFR 62196, as amended Aug. 15, 1997

5. Subregional Emissions Budgets

The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard. The conformity determination must demonstrate consistency with each subregional emissions budget in the SIP.

¹⁰ 40 CFR §93.124 (d)-(e), as amended by 62 FR 43780, 43816, Aug. 15, 1997.

¹¹ 40 CFR §93.124 (a), as amended by 62 FR 43780, 43816, Aug. 15, 1997.

Safety Margins in Emissions Budgets

A SIP submittal could show that emissions from all sources will be less than the total emissions that would enable an area to meet applicable requirements to demonstrate reasonable further progress, maintenance or attainment and have quantified that difference in emissions. In these cases, a safety margin¹² exists that equals the difference between expected emissions and emissions which could *occur and still enable the area to reach attainment*. A State may submit a SIP revision to the EPA, which assigns some or all of the safety margin to highway and transit sources for the purposes of conformity. Such a SIP revision must explicitly assign the safety margin in order for it to be used in conformity. The March 2, 1999 Court Decision affected a narrowly targeted provision for areas that submitted SIPs before the 1993 rule and had safety margins that were not allocated to the motor vehicle emissions budgets. The court decision does not impact the use of submitted safety margins in most areas. See the questions and answers at the end of this chapter for further information on safety margins.

Trading Emissions Among Budgets

A conformity determination cannot be based upon the trading of emissions among budgets from various sources of pollution unless the SIP establishes appropriate mechanisms for such trades¹³. For example, emissions from motor vehicles are allocated a certain amount of the total emissions budget from all sources and changing that allocation in order to make a conformity determination is not allowed unless provided for in the SIP. If the SIP does not establish such a mechanism, then a SIP revision would be required to change the budgets.

How to Find the Motor Vehicle Emissions Budget in the SIP

All SIPs submitted after the November 24, 1993 transportation conformity rule should have explicitly identified budgets. Motor vehicle emissions budgets may not have been explicitly labeled in SIPs which existed prior to that date. In these cases, the future highway and transit-related emissions used in the milestone or attainment demonstration is, in effect, the motor vehicle emissions budget. The interagency consultation process (see Chapter 2), will also have an established procedure for ensuring that copies of documents, including SIP submittals, are circulated among the participants and this documentation will provide the explicit motor vehicle emissions budget information.

Adequacy of Motor Vehicle Emissions Budgets

The August 1997 transportation conformity rule defines minimum criteria for determining the adequacy of a motor vehicle emissions budget in a submitted control strategy SIP or maintenance plan. The six minimum criteria for adequacy are listed below (also see: March 2, 1999 Court ruling section earlier in this chapter and 40 CFR, 62 43781-83, Aug. 15, 1997):

¹² 40 CFR §93.101, as amended by FR 62, 43803, Aug. 15, 1997. “A safety margin means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance.”

¹³ 40 CFR §93.124(c), as amended by 62 FR 43780, 43816, Aug. 15, 1997.

- (i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his or her designee) and was subject to a State public hearing;*
- (ii) Before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among Federal, State, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;*
- (iii) The motor vehicle emissions budget(s) is clearly identified and precisely quantified;*
- (iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);*
- (v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and*
- (vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 40 CFR §93.101 for definition); and reasons for the changes (including the basis for any changes related to emissions factors or estimates of vehicle miles traveled).*

Process to Determine Budget Adequacy

In addition to these adequacy criteria and in response to the March 2, 1999 Court Decision, the EPA developed a new adequacy process as described below and detailed in the EPA Guidance Memorandum of May 14, 1999. As stated in the EPA Guidance Memorandum, EPA will follow this process as an administrative matter until a final rule amendment is effective. The substantive criteria by which EPA determines adequacy will be the same as those currently included in 40 CFR 93.118(e)(4).

Notification of SIP submission: Within 10 days after a control strategy SIP or maintenance plan is formally submitted^{14,15}, EPA will notify the public by posting a notice on EPA's Office of Transportation and Air Quality website (www.epa.gov/oms/traq) and by notifying those who have previously requested notification of the SIP's submission. EPA's website will provide EPA Regional contact information so that interested parties can arrange or discuss notification processes. EPA will use postcards, letters, email or phone calls to notify requesters. The website will include information on how to obtain copies of the SIP.

Public comment: A 30-day public comment period commences immediately upon the website posting in two circumstances: (1) if the state has made the SIP electronically available to the public via a website, electronic bulletin board, etc.; or (2) if no one has requested copies of the SIP within 15 days after the date of EPA posting notification. If someone does request a copy of the SIP and EPA receives the request within the first 15 days, the 30-day public comment period won't start until the date that EPA mails the copy. EPA is not committing to make SIP submissions electronically

¹⁴The control strategy SIPs that must have motor vehicle emissions budgets for conformity are 15% plans, 9% plans, and attainment demonstrations.

¹⁵EPA will consider a SIP to be formally submitted on the date that the EPA regional office receives it (62 FR 43782, August 15, 1997).

available on its website. EPA's website will state when the public comment period begins and ends. If someone requests a copy of the SIP, the website will be updated to reflect any extension of the public comment period.

EPA's adequacy determination: EPA will issue its adequacy determination, including a response to comments, by posting it on EPA's Office of Transportation and Air Quality website (www.epa.gov/oms/traq) and by mailing it to requesters. EPA could also send the adequacy determination and response to comments by email, if both the EPA region and the requester(s) agree to it. EPA will also subsequently announce the determination in the Federal Register. The adequacy determination would take effect 15 days after publication in the Federal Register. Adequate budgets must be used in future conformity determinations; inadequate budgets cannot be used.

Additional information on the adequacy of budgets which is included in EPA's May 14, 1999 guidance (See [Appendix L](#)) is also included in the questions and answers section at the end of this Chapter.

Criteria for EPA Adequacy Determination of a SIP With a Motor Vehicle Emissions Budget

In general, the same criteria apply for EPA approval of a SIP with a motor vehicle emissions budget as apply for the entire SIP. The following key requirements should be noted by transportation practitioners (see the earlier sections of this chapter for more detailed information on general and specific provisions of SIPs):

1. The SIP must identify specific control strategies that will result in emissions reductions from highway and transit sources consistent with the motor vehicle emissions budget;
- 2) The SIP must identify how the State expects to achieve the reductions on the schedule that will achieve the purpose of the SIP (e.g., attainment or reasonable further progress); and,
- 3) Implementation of all transportation-related actions, including TCMs must be committed to by the entity with legal authority to carry-out the measures (i.e. State, MPO, transit agency, local government).

QUESTIONS AND ANSWERS

(Note: The following questions and answers are taken directly from EPA's May 14, 1999 Guidance on Implementation of March 2, 1999 Conformity Court Decision.)

Is EPA willing to use other processes for determining the adequacy of submitted budgets?

Yes, if EPA is moving forward to quickly propose action on a SIP, for instance in response to a court order, EPA could propose and take comment on adequacy as part of its proposed action on the SIP, in lieu of the process described earlier. In such cases, EPA could take final action on adequacy by posting the determination on the web and announcing it in the Federal Register, as described in the adequacy process earlier in this chapter. Alternatively, if EPA has followed the notification and comment process described earlier, it could finalize its adequacy determination with response to

comments as part of a proposed or final rulemaking action on the SIP.

For budgets that have already been submitted to EPA but haven't been used in conformity determinations, when will EPA notify the public that the submission has been received and the new adequacy review process has begun?

For submitted budgets that are currently in-house, EPA will soon be notifying the public by posting a notice on EPA's Office of Transportation and Air Quality website and by mailing, e-mailing, or calling those who have previously requested notification of the SIP's submission. If you are interested in receiving such notification, please contact your EPA Regional Office. The public comment period will begin according to the process highlighted earlier in this chapter.

What conformity test do I use before EPA has found the submitted budget adequate?

Use whatever conformity test applied before the new budget was submitted. For example, if your area has not submitted and received approval for budgets for the given criteria pollutant, you would use the emission reduction tests that are required by 40 CFR 93.119 of the conformity rule. If you had previously approved budget(s) for a given pollutant or previously submitted budget(s) that EPA had found adequate, you would need to meet the approved or adequate budget(s) for all analysis years. The submitted budget is not used until EPA finds it adequate. Contact your EPA Regional Office if you have questions about what conformity tests apply in your area.

What criteria will EPA use to determine the adequacy of a submitted budget?

EPA will continue to use the adequacy criteria contained in 40 CFR 93.118(e)(4) of the conformity rule. See the preamble for the final 1997 conformity rule (62 FR 43781-2, August 15, 1997) for more information about the adequacy criteria. EPA encourages air quality and transportation agencies to work closely with EPA Regional Offices to ensure that the SIP includes clearly defined, adequate motor vehicle emissions budgets. Close consultation during the SIP's development will assist EPA in making adequacy determination on submitted budgets quickly.

How does EPA's adequacy process relate to completeness review or approvability of the SIP?

EPA's completeness review of a submitted SIP is separate from the conformity adequacy process, and it uses different criteria. Likewise, EPA's approval process requires a more detailed examination of the SIP's control measures and technical analyses than the conformity adequacy process. Although the minimum criteria for adequacy allow EPA to make a cursory review of the submitted control strategies, demonstrations, and motor vehicle emissions budgets for conformity purposes, EPA recognized that other elements must also be in the SIP for it to ultimately be approved.

EPA's adequacy review should not be used to prejudge EPA's ultimate approval or disapproval of the SIP, since additional information may be submitted and more extensive review may change some of the conclusions. However, if EPA judges the budget inadequate, the State and local agencies should work closely with EPA to address the problems identified. A control strategy SIP or maintenance plan must contain an adequate motor vehicle emissions budget(s) in order for EPA to approve the SIP.

EPA's adequacy process will only be completed on SIPs that create motor vehicle emissions budgets used in conformity determinations (i.e., 15% SIPs, 9% SIPs, attainment demonstrations, and maintenance plans).

If EPA finds a submitted budget inadequate, can it reevaluate the decision later and call it adequate based on further analysis or if new information on the adequacy of the budget is submitted? Can the opposite occur?

Yes, but EPA would first have to post a notice on the Office of Transportation and Air Quality website explaining EPA's intention, so that the public could have an additional opportunity to comment. EPA would follow the details of the new adequacy process described above with respect to the newly submitted data.

Submitted budgets that have been used in previous conformity determinations:

What if I used a submitted SIP budget in previous conformity determination and EPA had declare the budget adequate prior to the March 2, 1999 court ruling? Is my previous determination valid?

Yes. In areas where the emissions budget has been declared adequate by EPA in compliance with 40 CFR 93.118(e)(4), the conformity determination remains valid. EPA published a list of the areas with adequate SIP budgets in the Federal Register on June 10, 1999. These budgets continue to apply and must be used in future conformity determinations. If you have questions about whether your area's budget was found adequate before the March 2, 1999 court ruling, contact your EPA Regional Office.

What if I used a submitted SIP budget in a previous determination before March 2, 1999, EPA had not formally found it adequate, and EPA has since approved the submitted SIP. Is my previous determination still valid?

Yes, the previous determination is still valid.

What if I used a submitted SIP budget in a previous conformity determination, and EPA had not formally found it adequate before March 2, 1999? Is my previous determination still valid?

Yes, if one of the following occurs:

EPA formally finds the budget adequate according to the adequacy criteria in 40 CFR 93.118(e)(4) of the existing conformity rule.

...In cases where EPA cannot find the budget adequate, the MPO and DOT were required to reaffirm that the previous determination is still valid based on alternative conformity tests. See DOT's June 18, 1999 guidance (Appendix M) for more details. EPA and DOT worked with affected areas so that their previous determinations could be reinstated quickly.

What was the court's decision on safety margins? Who is affected?

The court's ruling eliminated the flexibility offered to certain areas under 40 CFR 93.124(b) of the conformity rule. This section was a narrowly targeted provision for areas that submitted SIP's before the original 1993 conformity rule. These areas could subsequently submit SIP revisions in order to allocate portions of the approved safety margin to the SIP's motor vehicle emissions budgets. The 1997 rule allowed these SIP revisions to be used before EPA approved them. The court decided that EPA must fully approve these safety margin allocations before they can be used for conformity.

Are previous conformity determinations still valid if a submitted safety margin was used according to 40 CFR 93.124(b)?

Yes. Any past conformity determinations that relied on an unapproved safety margin allocation under 93.124(b) remains valid. EPA has approved most of the safety margin allocations that were used in past determinations, which satisfies the court's decision. Of course, future conformity determinations cannot be based on such submitted safety margin allocations, but must await EPA approval of the submitted allocations. EPA and DOT believe that to invalidate previous determinations that were based on submitted safety margin allocations under 93.124 (b) would cause grave disruption to the transportation planning process.

Can safety margins still be allocated to motor vehicle emissions budgets for use in conformity determinations?

Yes. The court eliminated the safety margin flexibility in section 93.124(b), but the majority of areas that allocate safety margins to their budgets are not affected by the court's ruling. In general, areas that do not have approved SIPs can use submitted safety margins in conformity determinations once EPA finds them adequate. Areas that have approved SIPs and wish to reallocate their safety margin could use such a revision for conformity purposes once EPA has approved it.

Additional Questions and Answers from EPA's October 14, 1994, February 15, 1994, and May 2, 1994 Memoranda**What are the consequences of failure to submit the transportation conformity SIP required by section 51.396 to be submitted by November 25, 1994?**

The final transportation conformity rule applies until EPA has approved the state's transportation conformity SIP. Also, the conformity SIP is not a control strategy SIP as meant by section 51.448 of the rule. Thus, failure to submit a conformity SIP has no practical implications for the ability to make—or criteria for making—conformity determinations. However, an EPA finding of failure to submit the conformity SIP or failure to submit a complete conformity SIP would start the 18-month sanctions clock, as required by Clean Air Act section 179.

If each county in an area has its own MPO and the SIP disaggregates its emission reduction targets by county, can the SIP be interpreted to establish a separate motor vehicle emissions budget for each county?

Yes. Although county-by-county disaggregation does not necessarily establish a separate emissions budget for each county, one can interpret the SIP to establish separate emissions budgets by county if there seems to be such an intent in the SIP. In this case, an intent for separate emissions budgets by county can be inferred if an area has separate MPOs for each county and if SIP transportation plan development activities in the area have historically been conducted on a county-by-county basis.

Does submitting and getting EPA approval for a NO_x budget relieve a state of the build/no-build test for NO_x?

An area would be relieved of the build/no-build test for all future analysis years only if the NO_x budget is part of an attainment or maintenance demonstration. If EPA approves a NO_x budget which applies only for a reasonable further progress (RFP) milestone year, the area is relieved of the build/no-build test for that milestone year. For future analysis years, the area would have to demonstrate consistency with the approved NO_x budget and also pass the build/no-build test for NO_x.

Many attainment demonstrations model multiple episodes with varying meteorology. Which episode establishes the motor vehicle emissions budget?

Even if these are multiple episodes modeled in the SIP, there will be only one motor vehicle emissions budget for the purposes of transportation conformity. The motor vehicle emissions budget should be the lowest one, i.e., the one which is most constraining.